



U.S. Department of Justice

United States Attorney  
Southern District of New York

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The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

November 14, 2022

**BY ECF**

Hon. Jesse M. Furman  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, New York 10007

**Re: *United States v. DeJesus*, 21 Crim. 564 (JMF)**

Dear Judge Furman:

The parties jointly submit this letter regarding the sentencing of Jairo DeJesus currently scheduled for November 30, 2022.

In light of the defendant's sentencing submission of November 11, 2022, dkt. 43, the parties agree that a *Fatico* hearing is necessary in this case. In particular, the defendant contests the following Guidelines calculations:

1. The quantity of narcotics that the defendant should be held responsible for, as described in paragraph 32 of the PSR;
2. Whether the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance, as described in paragraph 33 of the PSR;
3. Whether the defendant satisfied the criterion for safety valve relief, as described in paragraph 34 of the PSR;
4. Whether the defendant obstructed justice, as described in paragraph 37 of the PSR;
5. Whether the defendant is entitled to an adjustment for acceptance of responsibility, as described in paragraph 40 of the PSR.

The parties have conferred, and much of the evidence relevant to these Guidelines questions can be submitted in documentary form to the Court in advance of any hearing. In particular, the parties have stipulated:

1. To the accuracy of a law enforcement report describing the defendant's post-arrest statement to law enforcement on August 17, 2021;
2. To the accuracy of a law enforcement report describing the defendant's arrest in Miami on August 22, 2021;<sup>1</sup>

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<sup>1</sup> The defendant disputes one paragraph in this law enforcement report, which will be redacted out when submitted to the Court.

3. To the accuracy of notes describing the defendant's attempted safety valve proffer on April 14, 2022;
4. To the accuracy of lab reports for the narcotics;
5. To the accuracy of extractions of the defendant's cellphones; and
6. To the accuracy of paragraphs 10-18 of the PSR, which describe the defendant's sales of narcotics to a confidential source.

The primary factual issue that requires in-person testimony by Government witnesses will therefore be what narcotics were seized from an apartment on East 187<sup>th</sup> Street on August 17, 2021, and whether those narcotics belonged to the defendant, as described in paragraph 20 of the PSR.

As to scheduling, the defendant has requested that any *Fatico* hearing be scheduled on a date from January 4 to January 12, or from February 6 to February 10. The parties further expect that any hearing will take one day or less. The Government will submit a letter to the Court with the documentary evidence it will ask the Court to consider two weeks before the scheduled hearing, and the defendant will submit any pretrial opposition to the Court one week before the scheduled hearing.

Respectfully Submitted,


DAMIAN WILLIAMS  
United States Attorney

by: /s/ Kevin Mead  
Kevin Mead  
Assistant United States Attorney  
(212) 637-2211

CC: Bernard Alan Seidler, Counsel for Jairo DeJesus (by ECF)

Application GRANTED. A *Fatico* hearing will be held on **February 9, 2022, at 9:30 a.m.**, in **Courtroom 1105** of the Thurgood Marshall Courthouse, 40 Centre Street, New York, New York 10007. Sentencing, previously scheduled for November 30, 2022, is adjourned sine die.

The Clerk of Court is directed to terminate Doc. #44. SO ORDERED.



November 15, 2022